



Property Casualty Insurers
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Jim Tompkins
Deputy Insurance Commissioner
Washington Office of the Insurance Commissioner
PO Box 40258
Olympia, WA 98504-0258

Via email to OIC Rules Coordinator

RE: CR-101, Matter No. R-2015-06: Notice to Claimants in Third Party Settlements

Dear Mr. Tompkins,

On behalf of PCI and our members, whose members collectively write close to 30 percent of all P&C policies in force in Washington today, I write to provide comment with regard to the above-referenced matter involving a proposed rule requiring an insurer to notify a third party claimant when a claim (at or above a to-be-determined value) has been settled and paid by an insurer.

It is our understanding that the language under consideration in the proposed rule comes from model language developed by the American Bar Association. We also understand that at least one high-profile case successfully investigated by the Insurance Commissioner and prosecuted by the state has led to this rule proposal.

Overall, PCI is concerned that this proposed rule may impose an unreasonable burden on insurers, who are not responsible for the (likely rare) criminal actions of claimants' attorneys.

Like other criminal acts, failing to forward claims settlement proceeds and/or diverting such proceeds to the personal use of the attorney is clearly a criminal (as well as unethical) act, and responsibility for such acts must ultimately rest with the person(s) who committed the crime. The perpetrator should be responsible for full restitution, including interest, for all amounts that were wrongly diverted to the perpetrator's personal use.

PCI would note Washington, and many other states, have a crime victims' compensation fund that is specifically designed to assist those victims who qualify (see <http://www.lni.wa.gov/ClaimsIns/CrimeVictims/FileCoverage/EligibilityRequirements/Default.asp>). In Washington, a victim of a felony or gross misdemeanor appears to be eligible to apply for compensation. Additionally, Washington lawyers are obligated to maintain IOLTA accounts (Interest on Lawyers Trust Accounts). The interest on these accounts is to be available for various charitable purposes. Is it possible that these funds could be repurposed to assist victims who have been defrauded by their own lawyers?

As to the language of the ABA model as we understand it currently, we would offer some specific concerns.

In general, it is important to recognize that insurers working through a claim from a third party claimant owes a contractual responsibility specifically and exclusively to its own insured. In fact, precedential case law at the state Supreme Court level suggests that an insurance adjuster – an insurance company employee who may prepare legal documents and give advice affecting legal rights to claimants – should be held to the same standard of care required of practicing attorneys.

It would not be permissible for an insurer's attorney to contact a claimant directly where the claimant is represented by counsel. Jones v. Allstate could be interpreted to mean that insurance company employees are similarly restricted. And, on a pragmatic level, how would the insurer know where to send a required settlement notice? Injured parties sue the policyholder of an insurer, not the insurer itself. How would an

insurer be able to find or confirm a current address for the party that is suing its policyholder? Would additional verification of notice having been provided be required of the insurer to ensure compliance with the notice provisions (representing yet an additional administrative burden on the insurer)?

So, with regard to the first section of the ABA model, there may be circumstances where binding contractual language or existing case law could prevent contact between an insurer and a third party claimant. And PCI is concerned that other provisions not contemplated in the ABA model to monitor compliance will make this proposed new notice requirement even more onerous.

Given these concerns, our first recommendation is that the CR-101 in this matter be withdrawn and no new rules be promulgated in this area. Rather, we respectfully suggest the OIC work stakeholders including insurers, the state Attorney General, the courts and the legislature to amend statutes and/or regulations to ensure that violations of the relationship between attorneys and clients are dealt with harshly, and that victims of such criminal acts are fully compensated for their losses.

Should the OIC nonetheless move forward with language substantially similar to the ABA model, PCI suggests that language be added clarifying that the requirements in the first section apply only unless contact with a third party claimant is prohibited or limited under the terms of the applicable insurance policy or by law. PCI would oppose any additional reporting, "proof of disclosure" or other record-keeping requirements added in connection with the adoption of the ABA model as well.

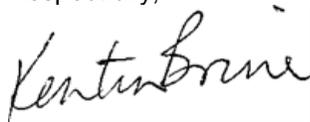
The second section of the ABA model states that no private right of action is created for any person against an insurer for failure to provide notice to a third party claimant. However, there is no similar language preventing a cause of action from a first-party insured against an insurer that makes contact with a third party claimant against the wishes of a first-party insured (or, as noted above, in conflict with applicable policy language). PCI would therefore suggest that in addition to the proposed ABA model language in the second section, wording be added to clarify that no private right of action (or defense to any cause of action) may arise from an insurer's contact with a third party claimant as set forth in the first section.

Additionally, PCI would suggest that the dollar threshold for claims falling under these proposed requirements be set reasonably high – for example, at or above \$250,000 – to avoid excessive imposition of new notice requirements by insurers.

Finally, PCI would request that any rule requiring insurers to provide additional notice to third party claimants be adopted with a delayed effective date (a minimum of six months is recommended) in order to provide insurers time to prepare notices and establish internal compliance mechanisms.

Thank you for the opportunity to provide comments on this matter. Please contact me or PCI's Washington counsel, Mel Sorensen, if we can provide additional information.

Respectfully,



Kenton Brine
PCI Assistant Vice President, NW Region